

retary that the applicant making the application has the financial capability to adequately carry out the purposes of such project and has developed and operated such project in accordance with the requirements of this subchapter and with the plans contained in previous applications for such assistance;

(6) the application contains such assurances as the Secretary may require respecting the intent and the ability of the applicant to meet the requirements of paragraphs (1) and (2) of section 300e(b) of this title respecting the fixing of basic health services payments and supplemental health services payments under a community rating system; and

(7) the application is submitted in such form and manner, and contains such additional information, as the Secretary shall prescribe in regulations.

An organization making multiple applications for more than one loan or loan guarantee under this subchapter, simultaneously or over the course of time, shall not be required to submit duplicate or redundant information but shall be required to update the specifications (required by paragraph (3)) respecting the existing or proposed health maintenance organization in such manner and with such frequency as the Secretary may by regulation prescribe. In determining, for purposes of paragraph (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary shall not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

(c) Regulations

The Secretary shall by regulation establish standards and procedures for health systems agencies to follow in reviewing and commenting on applications for loans and loan guarantees under this subchapter.

(July 1, 1944, ch. 373, title XIII, §1306, as added Pub. L. 93-222, §2, Dec. 29, 1973, 87 Stat. 925; amended Pub. L. 94-460, title I, §§105(a)(3), 117(b)(5), (6), Oct. 8, 1976, 90 Stat. 1948, 1955; Pub. L. 95-559, §12(b), (c), Nov. 1, 1978, 92 Stat. 2140; Pub. L. 99-660, title VIII, §§803(b)(1), 805(b), 806, Nov. 14, 1986, 100 Stat. 3799, 3800.)

Editorial Notes

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-660, §803(b)(1)(A), substituted “loan” for “grant, contract, loan.”

Subsec. (b). Pub. L. 99-660, §803(b)(1)(A), substituted “loan” for “grant, contract, loan,” in introductory text and in second sentence.

Subsec. (b)(1). Pub. L. 99-660, §803(b)(1)(B), struck out “in the case of an application for assistance under section 300e-2 or 300e-3 of this title, such application meets the application requirements of such section and in the case of an application for a loan or loan guarantee,” before “such application”.

Subsec. (b)(2). Pub. L. 99-660, §805(b), struck out reference to section 300e-4a.

Pub. L. 99-660, §803(b)(1)(C), struck out reference to section 300e-3.

Subsec. (b)(5) to (8). Pub. L. 99-660, §806, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and struck out former par. (5) which read as follows: “each

health systems agency designated for a health service area which covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted;”.

Subsec. (c). Pub. L. 99-660, §803(b)(1)(D), substituted “loans” for “grants, contracts, loans.”.

1978—Subsec. (b). Pub. L. 95-559 in par. (2) inserted “in the case of an application for assistance under section 300e-3, 300e-4, or 300e-4a of this title,” before “he determines” and in provisions following par. (8) inserted provision that in determining, for purposes of par. (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

1976—Subsec. (b)(5). Pub. L. 94-460, §117(b)(5), substituted “each health systems agency designated for a health service area which covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted;” for “the section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted, or if there is no such agency, the section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) such area, has, in accordance with regulations of the Secretary under subsection (c) of this section, been provided an opportunity to review the application and to submit to the Secretary for his consideration its recommendations respecting approval of the application or if under applicable State law such an application may not be submitted without the approval of the section 314(b) areawide health planning agency or the section 314(a) State health planning agency, the required approval has been obtained;”.

Subsec. (b)(7), (8). Pub. L. 94-460, §105(a)(3), added par. (7) and redesignated former par. (7) as (8).

Subsec. (c). Pub. L. 94-460, §117(b)(6), substituted “health systems agencies” for “section 314(b) areawide health planning agencies and section 314(a) State health planning agencies”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-660, title VIII, §803(c), Nov. 14, 1986, 100 Stat. 3800, provided that: “The amendments made by this section [amending this section and sections 300e-6, 300e-8, and 300e-16 of this title and repealing sections 300e-2 and 300e-3 of this title] do not apply to any grant made or contract entered into under title XIII of the Public Health Service Act [42 U.S.C. 300e et seq.] before October 1, 1985.”

Pub. L. 99-660, title VIII, §805(c), Nov. 14, 1986, 100 Stat. 3800, provided that: “The amendments made by this section [amending this section and repealing section 300e-4a of this title] do not apply to any loan or loan guarantee made under section 1305A of the Public Health Service Act [former 42 U.S.C. 300e-4a] before October 1, 1985.”

Amendment by Pub. L. 99-660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99-660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e-1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-460 effective Oct. 8, 1976, see section 118 of Pub. L. 94-460, set out as a note under section 300e of this title.

§ 300e-6. Administration of assistance programs

(a) Recordkeeping; audit and examination

(1) Each recipient of a loan or loan guarantee under this subchapter shall keep such records as the Secretary shall prescribe, including records

which fully disclose the amount and disposition by such recipient of the proceeds of the loan (directly made or guaranteed), the total cost of the undertaking in connection with which the loan was given or used, the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of a loan or loan guarantee under this subchapter which relate to such assistance.

(b) Report upon expiration of period

Upon expiration of the period for which a loan or loan guarantee was provided an entity under this subchapter, such entity shall make a full and complete report to the Secretary in such manner as he may by regulation prescribe. Each such report shall contain, among such other matters as the Secretary may by regulation require, descriptions of plans, developments, and operations relating to the matters referred to in section 300e-5(b)(3) of this title.

(c) Repealed. Pub. L. 99-660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799

(d) Other entities considered health maintenance organizations

An entity which provides health services to a defined population on a prepaid basis and which has members who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.] may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter if—

(1) with respect to its members who are entitled to such insurance benefits or to such medical assistance it (A) provides health services in accordance with section 300e(b) of this title, except that (i) it does not furnish to those members the health services (within the basic health services) for which it may not be compensated under such title XVIII [42 U.S.C. 1395 et seq.] or such State plan, and (ii) it does not fix the basic or supplemental health services payment for such members under a community rating system, and (B) is organized and operated in the manner prescribed by section 300e(c) of this title, except that it does not assume full financial risk on a prospective basis for the provision to such members of basic or supplemental health services with respect to which it is not required under such title XVIII or such State plan to assume such financial risk; and

(2) with respect to its other members it provides health services in accordance with section 300e(b) of this title and is organized and operated in the manner prescribed by section 300e(c) of this title.

An entity which provides health services to a defined population on a prepaid basis and which has members who are enrolled under the health benefits program authorized by chapter 89 of

title 5, may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter if with respect to its other members it provides health services in accordance with section 300e(b) of this title and is organized and operated in the manner prescribed by section 300e(c) of this title.

(July 1, 1944, ch. 373, title XIII, §1307, as added Pub. L. 93-222, §2, Dec. 29, 1973, 87 Stat. 926; amended Pub. L. 94-460, title I, §§109(b)(1), 112, Oct. 8, 1976, 90 Stat. 1950, 1953; Pub. L. 97-35, title IX, §943(d), Aug. 13, 1981, 95 Stat. 576; Pub. L. 99-660, title VIII, §803(a), (b)(2), Nov. 14, 1986, 100 Stat. 3799, 3800.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-660, §803(b)(2), substituted “loan or loan guarantee” for “grant, contract, loan, or loan guarantee”, “proceeds of the loan” for “proceeds of the grant, contract, or loan”, and “with which the loan was given” for “with which such assistance was given”.

Subsecs. (a)(2), (b). Pub. L. 99-660, §803(b)(2)(A), substituted “loan or loan guarantee” for “grant, contract, loan, or loan guarantee”.

Subsec. (c). Pub. L. 99-660, §803(a), struck out subsec. (c) which read as follows: “If in any fiscal year the funds appropriated under section 300e-8 of this title are insufficient to fund all applications approved under this subchapter for that fiscal year, the Secretary shall, after applying the applicable priorities under sections 300e-2 and 300e-3 of this title, give priority to the funding of applications for projects which the Secretary determines are the most likely to be economically viable.”

1981—Subsec. (e). Pub. L. 97-35 struck out subsec. (e) which related to limitation on cumulative total of loan guarantees in any fiscal year.

1976—Subsec. (d). Pub. L. 94-460, §112, inserted sentence at end setting conditions upon which an entity providing health services to a defined population on a prepaid basis may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter.

Subsec. (e). Pub. L. 94-460, §109(b)(1), inserted “for a private health maintenance organization (other than a private nonprofit health maintenance organization)” after “may be made”, and “for private health maintenance organizations (other than private nonprofit health maintenance organizations)” after “guaranteed”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99-660, set out as a note under section 300e-5 of this title.

Amendment by Pub. L. 99-660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99-660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e-1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-460 effective Oct. 8, 1976, see section 118 of Pub. L. 94-460, set out as a note under section 300e of this title.

§ 300e-7. General provisions relating to loan guarantees and loans**(a) Conditions**

(1) The Secretary may not approve an application for a loan guarantee under this subchapter unless he determines that (A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States, and (B) the loan would not be available on reasonable terms and conditions without the guarantee under this subchapter.

(2)(A) The United States shall be entitled to recover from the applicant for a loan guarantee under this subchapter the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery; and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this subchapter (including terms and conditions imposed under subparagraph (D)) may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(C) Any loan guarantee made by the Secretary under this subchapter shall be incontestable (i) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee, and (ii) as to any person (or his successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or his successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(D) Guarantees of loans under this subchapter shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subchapter will be achieved.

(b) Application requirements

(1) The Secretary may not approve an application for a loan under this subchapter unless—

(A) the Secretary is reasonably satisfied that the applicant therefor will be able to make payments of principal and interest thereon when due, and

(B) the applicant provides the Secretary with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project or undertaking with respect to which such loan is requested.

(2) Any loan made under this subchapter shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) on the date the loan is made, bear interest at a rate comparable to the rate of interest prevailing on such date with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default) as the Secretary determines to be necessary to carry out the purposes of this subchapter while adequately protecting the financial interests of the United States. On the date disbursements are made under a loan after the initial disbursement under the loan, the Secretary may change the rate of interest on the amount of the loan disbursed on that date to a rate which is comparable to the rate of interest prevailing on the date the subsequent disbursement is made with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

(3) The Secretary may, for good cause but with due regard to the financial interests of the United States, waive any right of recovery which he has by reason of the failure of a borrower to make payments of principal of and interest on a loan made under this subchapter, except that if such loan is sold and guaranteed, any such waiver shall have no effect upon the Secretary's guarantee of timely payment of principal and interest.

(c) Sale of loans

(1) The Secretary may from time to time, but with due regard to the financial interests of the United States, sell loans made by him under this subchapter.

(2) The Secretary may agree, prior to his sale of any such loan, to guarantee to the purchaser (and any successor in interest of the purchaser) compliance by the borrower with the terms and conditions of such loan. Any such agreement shall contain such terms and conditions as the Secretary considers necessary to protect the financial interests of the United States or as otherwise appropriate. Any such agreement may (A) provide that the Secretary shall act as agent of any such purchaser for the purpose of collecting from the borrower to which such loan was made and paying over to such purchaser, any payments of principal and interest payable by such organization under such loan; and (B) provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this paragraph.

(3) After any loan under this subchapter to a public health maintenance organization has been sold and guaranteed under this subsection, interest paid on such loan which is received by the purchaser thereof (or his successor in interest) shall be included in the gross income of the purchaser of the loan (or his successor in interest) for the purpose of chapter 1 of title 26.

(4) Amounts received by the Secretary as proceeds from the sale of loans under this sub-